IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

OP.No. 29177 of 2001(S)

PETITIONERS:
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1. C.V. JOSSEY, S/O. LATE C.L. VARGHESE, CHUNGATH HOUSE, WEST NADA, GURUVAYOOR, TRICHUR DISTRICT.

2. C.V. SHEEJA, D/O. LATE C.L. VARGHESE, CHUNGATH HOUSE, WEST NADA, GURUVAYOOR, TRICHUR DISTRICT

3. C.V. JESSY, D/O. LATE C.L. VARGHESE, CHUNGATH HOUSE, WEST NADA, GURUVAYOOR, TRICHUR DISTRICT REPRESENTED BY POWER OF ATTORNEY HOLDER, C.V. JOSSEY, IST PETITIONER.

BY ADV. SRI.T.M.CHANDRAN
ADV. SRI.S.SUJITH

RESPONDENTS:
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1. THE COMMISSIONER OF CENTRAL EXCISE, COCHIN.

2. THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL, SOUTH ZONAL BENCH, BANGLORE.

3. THE ASSISTANT COLLECTOR OF CENTRAL EXCISE, TRICHUR DIVISION.

BY ADV. SRI.JOHN VARGHESE, SCGSC
SRI.P.PARAMESWARAN NAIR, ASST.SOLICITOR GENERAL.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1	:	TRUE COPY OF THE ORDER DT. 02.04.1990 PASSED BY THE FIRST RESPONDENT.
EXT.P2	:	TRUE COPY OF THE JUDGMENT DT. 28.07.1994 IN O.P. 5459/1990 ON THE FILE OF THIS HON'BLE COURT.
EXT.P3	:	TRUE COPY OF THE APPEAL MEMO FILED BY THE FIRST PETITIONER ON 14.10.1994.
EXT.P4	:	TRUE COPY OF THE APPEAL MEMO FILED BY THE SECOND PETITIONER ON 27.03.1995.
EXT.P5	:	TRUE COPY OF THE APPEAL MEMO FILED BY THE THIRD PETITIONER ON 27.03.1995.
EXT.P6	:	TRUE COPY OF THE DELAY PETITION FILED BY THE PETITIONERS.
EXT.P7	:	TRUE COPY OF THE COMMON ORDER NO.F1/886-888/2001 PASSED BY THE SECOND RESPONDENT.

/TRUE COPY/

P.S. TO JUDGE.

H.L.DATTU, C.J. & K.T.SANKARAN,J.

O.P. NO. 29177 OF 2001 S

Dated this the 7th August, 2007

JUDGMENT

H.L.DATTU, C. J.

A second round of litigation by the petitioners before this Court. On the earlier occasion, they were before this Court in O.P.No.5459 of 1990. In the said Original Petition filed under Article 226 of the Constitution of India, they sought for a writ in the nature of certiorari to quash Ext.P15 order passed by the Collector of Central Excise and Customs under the provisions of the Gold (Control) Act, 1968, dated 2.4.1990.

2. The learned single Judge while disposing of the Original Petition, in too many places had stated that the gold that was seized from the residence of one Sri.C.V.Alexander on 2.6.1989, belongs to him alone and not to any other person. The Court has further observed that all the claims made by the petitioners in the Original Petition were an after thought and false claims. In the words of the learned single Judge:

> ".. In fact, in the statement given by R4 on 2.6.1989, he categorically admitted that none of the gold ornaments mentioned in the declaration of his family gold were included in the seized ornaments and that all the gold ornaments belonging to his father, mother, sisters and other family members were returned after verification. He himself sorted out the ornaments seized and they were found to be 947.100 gms new ornaments and 1160.500 gms old ornaments. He admitted that the new ornaments are for sale and that the old ornaments were purchased by him without accounting for the same and they were kept for illegal transactions through a jewellery shop. Statements of the various family members including that of C.L.Varghese, the father of R4, were recorded and he clearly stated that none of the seized gold ornaments was purchased by him and that none of the seized ornaments belonging to his wife and daughters. It is clear that subsequent to the raid, petitioners

> have been set up to make false claims. Paragraph 15 of Ext.P15 is very significant. The various ornaments which were claimed by the petitioners and others could not be identified by them from the seized ornaments. It was found that the weight and quantity of the ornaments identified by various persons were not found agreeing with the same as they claimed in their petitions. They could not give any satisfactory explanation for the discrepancy in identifying the ornaments. The Collector of Central Excise and Customs found that the claims of those persons are not genuine and that they are trumped up to help C.V.Alexander. From a reading of Ext.P15 order, it is quits clear that all persons concerned were given notice. The claim that the order is passed without giving notice and without giving opportunity to the affected parties is false. There is absolutely no violation of the principles of natural justice in passing Ext.P15 order."

Apart from deciding the case on merits, the learned single Judge has also observed that the petitioners have an alternate remedy. That only means, the Court while disposing of the Original Petition has decided the case both on merits and also on the ground that the petitioners have an alternate remedy.

3. Aggrieved by the said order passed by the learned single Judge, the petitioners in the Original Petition had filed Writ Appeal before this Court in No.1036 of 1994. A Division Bench of this Court by its judgment dated 26.8.1994, has rejected the Writ Appeal. The orders passed by the Division Bench is as under:

> "We agree with the reasonings and conclusions of the learned single Judge. The appeal is dismissed."

4. After the disposal of the appeal, all the three petitioners had filed appeals before the Customs, Excise and Gold (Control) Appellate Tribunal questioning the correctness or otherwise of the orders passed by the adjudicating authority/Collector of Central Excise and Customs, dated

2.4.1990. The Tribunal by order dated 10.5.2001, has rejected the appeals on the ground that the appellants cannot maintain the appeals on the ground that they are not aggrieved persons. The Tribunal has not decided the case on merits. Aggrieved by the findings and conclusions reached by the Tribunal, the appellants before the Tribunal have approached this Court once again in the present Original Petition.

5. Learned counsel appearing for the petitioners would submit that under Section 81 of the Gold (Control) Act, 1968, any person aggrieved by the orders passed by the Collector of Central Excise or of Customs as an adjudicating authority can maintain an appeal before the Appellate Tribunal. Therefore, it is contended, the appellants were aggrieved persons by the orders passed by the Collector of Central Excise and Customs and, therefore, the Tribunal was not justified in rejecting the appeals filed by the appellants/petitioners before us. In aid of his submission, the learned counsel relied upon Section 81 of the Gold (Control) Act and also the observations made by the Apex Court explaining the meaning of the expression “aggrieved person”.

6. Learned counsel appearing for the respondents justifies the orders passed by the Tribunal.

7. The question before us is whether the Tribunal was justified in rejecting the appeals on the ground that the appellants before them were not the aggrieved persons?

7. Under Section 81 of the Gold (Control) Act, any person aggrieved by

an order passed by the Collector of Central Excise may file appeal to the Appellate Tribunal. In the instant case, if not for the observations made by the learned single Judge of this Court, it would not have been difficult for us to say that the petitioners are the aggrieved persons. However, the learned single Judge while disposing of O.P.No.5459 of 1990 by judgment dated 28th July, 1994, in too many places in its judgment has observed that the petitioners have no right whatsoever on the gold seized from the possession of one Sri.C.V.Alexander. If the petitioners do not have any right, they cannot calling themselves as aggrieved persons of the orders passed by the Collector of Central Excise. The orders so passed by the learned single Judge was confirmed by the Appellate Court also. In that view of the matter, in our opinion, the Tribunal is justified in coming to the conclusion that since the petitioners are not aggrieved persons, no appeal would lie under Section 81 of the Gold (Control) Act. In that view of the matter, the reliefs sought for by the petitioners in this Original Petition cannot be granted by us. Accordingly, the Original Petition requires to be rejected and it is rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. & K.T.SANKARAN, J.

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JUDGMENT

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